

Short Title: Partition/Title by Seven Years' Possession

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT TITLE TO REAL PROPERTY ALLOTTED IN A
PARTITION PROCEEDING TO AN UNKNOWN PERSON MAY BE ACQUIRED
AFTER SEVEN YEARS OF POSSESSION BY A PERSON WHO HAD AN
UNDIVIDED INTEREST IN, OR WHOSE RELATIVE HAD AN UNDIVIDED
INTEREST IN, THE PROPERTY AT THE TIME OF THE ALLOTMENT.

The General Assembly of North Carolina enacts:

Alternative A for Section 1

[SECTION 1.(a) G.S. 1-38 reads as rewritten:

"§ 1-38. Seven years' possession under color of title.

(a) When a person or those under whom ~~he~~the person claims is and has been in
possession of any real ~~property~~property under all the following criteria for seven years, under
~~known and visible lines and boundaries and under color of title, for seven years~~, no entry shall
be made or action sustained against ~~such~~the possessor by a person having any right or title to
the ~~same~~property, except during the seven years next after ~~his~~the person's right or title has
descended or accrued, who in default of suing within that time shall be excluded from any
claim thereafter ~~made; and~~made:

(1) The possession is under known and visible lines and boundaries.

(2) The possession is under color of title.

~~such possession~~Possession, so held, is a perpetual bar against all persons not under ~~disability~~
~~Provided, that commissioner's disability. Commissioner's~~ deeds in judicial sales and trustee's
deeds under foreclosure ~~shall~~ also constitute color of title.

(b) ~~If~~The listing and paying of taxes on the real property marked and for which a survey
and map have been certified and recorded in accordance with all the following requirements

constitute prima facie evidence of possession of real property under known and visible lines
and boundaries:

(1) The ~~marking of~~ boundaries on the property are marked by distinctive markings on trees or by the placement of visible metal or concrete boundary markers in the boundary lines surrounding the property, ~~such markings to be~~ and the markings are visible to a height of 18 inches above the ~~ground, and~~ ground.

(2) ~~The recording of a~~ All the following:

a. A map prepared from an actual survey by a surveyor registered under the laws of ~~North Carolina, this State is recorded~~ in the book of maps in the office of the register of deeds in the county where the real property is ~~located,~~ located.

b. ~~with a~~ A certificate is attached to ~~said the~~ map by which the surveyor certifies that the boundaries as shown by the map are those described in the deed or other title instrument or proceeding from which the survey was made, and the surveyor's certificate ~~reciting~~ recites the book and page or file number of the deed, other title ~~instrument~~ instrument, or proceeding from which the survey was made, made.

~~then the listing and paying of taxes on the real property marked and for which a survey and map have been certified and recorded as provided in subdivisions (1) and (2) above shall constitute prima facie evidence of possession of real property under known and visible lines and boundaries.~~

Maps recorded prior to October 1, 1973 may be qualified under this ~~statute section~~ by the recording of certificates prepared in accordance with subdivision (b)(2) ~~above.~~ of this section.
~~Such~~ The certificates ~~must~~ shall contain the book and page number where the map is filed, in

addition to the information required by subdivision (b)(2) ~~above, of this section,~~ and shall be recorded and indexed in the deed books. When a certificate is filed to qualify ~~such a~~ the recorded map, the register of deeds shall make a marginal notation on the map in the following form: "Certificate filed pursuant to G.S. 1-38(b), book _____ (enter book where filed), page _____"

(c) Maps recorded prior to October 1, 1973 ~~shall~~ qualify as if they had been certified as ~~herein~~ provided in this section if ~~said the~~ maps can be proven to conform to the boundary lines on the ground and to conform to instruments of record conveying the ~~land~~ real property which is the subject matter of the map, to the person whose name is indicated on ~~said the~~ recorded map as the owner ~~thereof.~~ of the property. Maps recorded after October 1, 1973 shall comply with the provisions for a certificate as ~~hereinbefore~~ set forth in this section."

SECTION 1.(b) Article 4 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-38.1. Color of title substitute; possession of property allotted in a partition proceeding to an unknown person.

(a) If a person or a person's relative had an undivided interest in real property as a joint tenant or a tenant in common at the time the property was allotted in a partition proceeding under G.S. 46-13(a) to a person whose name is not known, this set of circumstances is a substitute for color of title to the property in satisfaction of G.S. 1-38(a)(2) for the person who had, or whose relative had, the interest in the property.

(b) In this section, "relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State."

[Staff Note: The definition of "relative" is based on Section 2(9) of the Uniform Partition of Heirs Property Act.]

Alternative B for Section 1

[SECTION 1. Article 4 of Chapter 1 of the General Statutes is amended by adding
a new section to read:

**"§ 1-38.1. Seven years' possession; property allotted in a partition proceeding to an
unknown person.**

(a) A person who satisfies all the following requirements acquires title to real property
as if the person had possessed the property under color of title for seven years pursuant to
G.S. 1-38, and no entry shall be made or action sustained against the person after that time by a
person having any right or title to the property:

(1) The person or the person's relative had an undivided interest in the property
as a joint tenant or a tenant in common at the time the property was allotted
in a partition proceeding under G.S. 46-13(a) to a person whose name is not
known.

(2) The person satisfies all the requirements of possession of the property
provided in G.S. 1-38, except for the requirement that the person have color
of title to the property, for a period of seven years after the allotment. The
person may tack the person's possession to possession by a relative of the
person that occurred after the allotment.

(b) In this section, "relative" means an ascendant, descendant, or collateral or an
individual otherwise related to another individual by blood, marriage, adoption, or law of this
State."

*[Staff Note: The definition of "relative" is based on Section 2(9) of the Uniform Partition of
Heirs Property Act.]*

*[Staff Note: In the case where a person's relative, but not the person, was a cotenant of the
property, neither alternative requires that the person claim the property under the relative.]*

End of Alternatives for Section 1

SECTION 2. G.S. 46-13 reads as rewritten:

"§ 46-13. Partition where ~~shareowners~~ cotenants unknown or title disputed; allotment of shares in ~~common~~ common; seven years' possession.

(a) If there are any ~~of the tenants in common, or joint tenants, cotenants~~ whose names are not known or whose title is in dispute, the ~~share or shares of such persons~~ the cotenants shall be ~~set off~~ allotted together as one parcel. If, in any partition proceeding, two or more cotenants appear as ~~defendants~~ respondents claiming the same ~~share of interest in the premises~~ real property to be divided, or if any part of the ~~share interest~~ claimed by the petitioner is disputed by any ~~defendant or defendants, respondent~~, it shall not be necessary to decide on their respective claims before the court shall order the partition or sale to be made, but the partition or sale shall be made, and the controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding.

(b) If two or more ~~tenants in common, or joint tenants, cotenants~~ by petition or ~~answer~~, answer request it, the commissioners may, by order of the court, allot their several shares to them in common, as one parcel, ~~provided such so long as the division shall not be~~ is not injurious or detrimental to any ~~cotenant or joint tenant~~ cotenant.

(c) Title to real property allotted to a person whose name is not known under subsection (a) of this section may be acquired after seven years of possession pursuant to [G.S. 1-38 and G.S. 1-38.1] [G.S. 1-38.1] by a former cotenant or a relative of a former cotenant as defined in [G.S. 1-38.1] [that section]."

SECTION 3. This act becomes effective [October 1, 2020].

[Staff Note: Under current law, a person who had an interest in, or whose relative had an interest in, real property that was allotted in a partition proceeding to an unknown person must adversely possess the property for 20 years to acquire title by adverse possession. This draft provides that this person instead acquires title after only seven years of adverse possession, effectively shortening the statute of limitations that applies to a claim against this person. This draft does not limit its temporal application, so a person could acquire title to real property on

1 *the draft's effective date provided the person had adversely possessed the property for seven*
2 *years and met all of the draft's other requirements.*

3 *North Carolina caselaw provides that a bill that shortens a statute of limitations must*
4 *provide a grace period between the enactment date and the effective date to comport with the*
5 *constitutional requirement of due process. See Flippin v. Jarrell, 301 N.C. 108, 114, 270*
6 *S.E.2d 482, 486 (1980); Smith v. City of Charlotte, 79 N.C. App. 517, 525-26, 339 S.E.2d 844,*
7 *849-50 (1986). In Flippin, the North Carolina Supreme Court suggested in dicta that eight*
8 *months would be sufficient, and in Smith, the North Carolina Court of Appeals held that five*
9 *months was sufficient. Flippin, 301 N.C. at 114, 270 S.E.2d at 486; Smith, 79 N.C. App. at*
10 *526, 339 S.E.2d at 850. To be safe, the draft provides for an effective date of October 1, 2020,*
11 *thus providing a grace period of one year if the bill is enacted in 2019.]*